

**REPORT - PLANNING COMMISSION MEETING**  
**October 24, 2002**

**Project Name and Number:** Center Theater (PLN2003-00085)

**Applicant:** Dirk Lorenz

**Proposal:** To consider a Conditional Use Permit application to operate a performing arts and dinner theater, movie theater, and a partial waiver of parking space requirements.

**Recommended Action:** Approve, based on findings and subject to conditions.

**Location:** 37411 Fremont Boulevard and 4036 Beloveria Court, Centerville Planning Area

**Assessor Parcel Number(s):** 501 053601800; 501 053601702

**Area:** Site(s) Total: 0.63 acres; Building (theater): 8,353 square feet;

**Owner:** Josephine Salih

**Environmental Review:** This project is categorically exempt from CEQA review under Section 15332, In-Fill Development Projects.

**Existing General Plan:** C-C, H; Community Commercial, Primary Historic Resource

**Existing Zoning:** C-C (CSPC); Community Commercial, Centerville Specific Plan Area

**Existing Land Use:** Vacant building, 6-unit apartment building, and parking lot

**Public Hearing Notice:** Public hearing notification is applicable. A total of 533 notices were mailed to owners and occupants of property within 1,000 feet of the site including on the following streets: Peralta Boulevard, Fremont Boulevard, Maple Street, Joseph Street, Jason Way, Gillet Road, Church Avenue, Bonde Way, Central Avenue, and other nearby streets. The notices to owners and occupants were mailed on October 14, 2002. A Public Hearing Notice was delivered to The Argus on October 9, 2002 to be published by October 14, 2002.

**Executive Summary:** The applicant is seeking approval of a Conditional Use Permit to operate a performing arts and movie theater at a maximum seating capacity of 400 seats. The applicant proposes to use the venue to show classic movies, art films, film festivals, live and dinner theater productions. The applicant is also seeking a partial waiver of parking requirements and approval of off-site parking agreements. The Conditional Use Permit will automatically expire without further public notice or hearing upon the expiration of any required off-site parking agreement.

**Historical Background and Previous Actions:** The Center Theater was built by the Salih brothers in 1946 (Lee, Fred and Harry Salih). The building designer, Alexander A. Cantin, was a prominent San Francisco architect who designed a number of theaters in the Bay Area. The theater originally showed first-run motion picture films – including “The Walls Came Tumbling Down” and “Cinderella Jones” on opening night. Live concerts were also showcased in the theater, and folklore has it that the Grateful Dead performed at the theater when they were known as the Warlocks.

As the years passed, the Center Theater strove to maintain its identity and vitality in the face of competition from outlying modern shopping areas and drive-in theaters. In 1973, the theater was closed after the death of the last of the Salih brothers. The Salih family, however, retains ownership today.

From 1977 till the mid-80's, the theater operated as a Spanish-language venue called the Cine Azteca. Shortly thereafter, the Center Theater was known as the ABC Center, which operated as a discount theater up until 1992. In November of that year, the Naz opened providing first run Indian movies. In 2000, the Naz was closed after opening the Naz 8 in the

Hub Shopping Center. Although a movie theater previously occupied the space proposed for the new theater, the use was discontinued for a period of time and lost its status as a “legal non-conforming” use. Live performance theater and movie theater uses were permitted uses in the C-C district up until November 23, 2000, when a Zoning Text Amendment required a motion picture theater with 150 seats or more and performance arts theater with 100 seats or more to obtain a Conditional Use Permit.

**Project Description:** The site includes two parcels: one fronting Fremont Boulevard, which houses the theater building (37411 Fremont Boulevard) and the other at the rear where a 6-unit apartment building and 30 parking spaces are situated (4036 Belvorvia Court). The proposed Conditional Use Permit would be applicable to both parcels, but does not affect the status of the apartment units on the second parcel. The applicant benefits from the 30 spaces provided for both the theater use and existing apartment building. Both parcels are owned by the Salih family.

The applicant is proposing that the Center Theater be used as a venue to show classic movies, art films, film festivals, live theater and dinner theater productions. The applicant anticipates working with other local community groups including the Center Theater Foundation, non-profits, business associations, and theater groups to showcase Fremont’s diverse culture and talents.

The theater currently has 571 available seats. Due to the existing parking constraints and interest of surrounding businesses, a maximum of 400 seats are proposed to be sold at any event. Staff has conditioned that the applicant restrict the use of the remaining 171 seats so that they are not easily accessible to the patrons. The applicant is proposing to use an on-site manager to act as a “physical non-permanent barrier” to prevent additional seats from being used, cordoning off the area and add contractual obligations to the lease that would prevent the renter from selling more than 400 tickets to the public. Staff recommends a method of restriction such as removing the seat cushion, removing the seats or constructing a barrier to limit the access. Staff will work with the applicant to develop an appropriate method prior to releasing the Conditional Use Permit. A concession area located in the lobby, is also proposed and would include bottled water, soda, prepackaged candy, popcorn, ice cream novelties, chips, cookies, and coffee.

The proposed hours of operation for the theater are as follows:

5 pm – 11 pm Monday through Friday  
12 pm – 11 pm Saturday and Sunday

The applicant has stated that all functions will conclude by 11 pm. The theater will be locked up by 12 am. There will be instances that the theater will be used for rehearsals prior to the performance. Non-performance uses such as administration activities or rehearsals can occur earlier.

No architectural or site plan modifications are proposed at this time. Any future signage would be obtained at a later time and would be subject to the requirements of the Fremont Municipal Code (FMC).

A total of 100 parking spaces are required for this theater use as proposed by the applicant (a 400 seat theater). The site currently contains 30 parking stalls, 12 of which are for the 6-unit apartment units. The applicant has indicated to staff that a number of property owners are willing to supply parking spaces for this theater use. The applicant is requesting a parking waiver reduction for 25 spaces having a remainder off-site requirement for 57 spaces. An in-depth parking discussion is provided later on in this report. The Use Permit shall automatically expire without further public notice or hearing upon the expiration of any required off-site parking agreement.

#### **Project Analysis:**

- **General Plan Conformance:** The existing General Plan land use designation for the project site is Community Commercial. The Center Theater is listed as a Primary Historic Resource. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Goal F6                      A unified city with thriving districts and emerging communities, each with its own identity.

*Analysis: The proposed use will help invigorate Centerville as it enhances the cultural activity in the Fremont community. What was once an integral part of the Centerville for a few decades is now proposed to promote the identity of Centerville in the years to come.*

**Goal F8** A diversity of residential, recreational, cultural, employment and shopping opportunities.

*Analysis: A theater use not only supports a cultural opportunity but also promotes cultural diversity in Fremont and will serve as a place for social gathering. A community-run theater will ensure that a multitude of cultural opportunities will be made available to meet the diverse needs of the community. The applicant has listed over 20 non-profit organizations, cultural groups, business associations, and theatrical groups that would be the users of this theater. In reviewing this list, it is clear that the applicant's intention is to include all facets of our community in the future to use the theater.*

**Policy LU 2.14** The Community Commercial Center should be a pedestrian oriented commercial environment.

*Analysis: It has been proven in many 'Main Street' districts throughout the country, that a theater can act as a catalyst for activity and reinvestment. A theater use can promote an increase in foot traffic to other shops and restaurants in the vicinity. The General Plan states that the typical, community commercial center uses include restaurants, antique stores, apparel stores, professional offices, general merchandise stores, **cinemas** and health clubs. The re-use of this property will meet this policy.*

**Policy LE 3.2.1** Actively promote the revitalization of existing community commercial centers, drawing on the unique and historic features of each community.

*Analysis: This 'Moderne' theater, which is on the City of Fremont's Primary Historic Resource list, can become a venue for visual focus, and a place for social interaction and community activities.*

- **Centerville Specific Plan:** This project is located within Subarea 1 of the Centerville Specific Plan. Subarea 1 is the historic retail district of Centerville. It contains the largest and oldest concentration of neighborhood and community retail uses and structures in Centerville. The plan states "a revitalization of the historic retail district to fit a heritage Main Street theme" is planned for this area and individual development proposals and infill projects should fit into the concept of a traditional community shopping center and/or specialty retail shopping center. It is also stated that infill projects should also revitalize a pedestrian oriented retail environment and the appropriate provisions of the Fremont Municipal Code (FMC) shall regulate these commercial uses. This project complies with the intent and requirements of the Centerville Specific Plan.

**Historic Conservation Element:** The Centerville Specific Plan specifically states that historic building resources should be used as catalysts to stimulate the revitalization of the historic retail district of Centerville. The Center Theater is a Primary Historic Resource and the original and permitted use of this building from the years between 1946 to 2000 was for a movie theater.

- **Zoning Regulations:** The site is already fully developed, and there are no site plan or architectural changes proposed. As such, no discussion on setbacks, FAR, or other zoning requirements is presented.

**Parking:** A total of 100 parking spaces are required for this 400 seat theater use as proposed by the applicant. The site currently contains 30 parking stalls, 12 of which are for the 6-unit apartment units. The applicant is requesting a parking waiver reduction for 25 spaces.

Type of Parking provided	Number of spaces
On-site parking	18 spaces
Off-site (within 400 feet with parking agreements)	57 spaces
Waiver (curb-side parking)	25 spaces
<b>Total</b>	<b>100 spaces</b>

FMC section 8-22006 authorizes the applicant to use off-site parking spaces to satisfy the parking requirements for the proposed theater use, as long as the off-site parking is guaranteed for the life of the use of the theater by an agreement executed by all affected property owners. The applicant has indicated to staff that a number of property owners are willing to supply parking spaces for this theater use. The total required would be 57 spaces. Staff has concluded that this number of parking spaces is possible within the 400 feet requirement from the project site(s). The parking supply must be available for the theater use and cannot interfere with the hours of operation of the businesses on the provider's property unless there is a surplus of parking on that site. Access and peak usage times will be reviewed by staff for conformance prior to the release of the Conditional Use Permit. The Use Permit will not be effective until such time the applicant has provided parking agreements, satisfactory to the City Attorney and staff, for the required off-site parking.

Although, as noted above, the applicant has indicated that neighboring property owners are willing to supply parking spaces, staff has also been informed that some or all of the neighboring property owners may be unwilling to record agreements against their property in order to commit their property for parking for an indeterminate term. Thus, in order for the City to be able to conclude that the off-site parking is guaranteed to the life of the use of the theater, the City will need to limit the term of the Conditional Use Permit to the term of the shortest off-site parking agreement. Therefore, when staff receives fully executed parking agreements from property owners sufficient to satisfy the requirement for 57 off-site spaces, staff will review the term of each agreement to determine the agreement with the earliest termination date. That earliest termination date shall be the automatic expiration date of the Conditional Use Permit. It should also be noted that if a property owner decides to cancel the parking agreement with the applicant or the applicant cannot maintain a parking agreement because of a change of ownership, the applicant will be subject to a revocation hearing unless an equal number of replacement spaces are provided within 400 feet of the project site.

The applicant is requesting a waiver to allow a reduction of parking space requirements totaling 25 spaces. Such a request may be considered under Subarea 1 of the Centerville Design guidelines referred to as the "Historical Retail District" as well as other historical "mainstreet" areas in Fremont. Under Section 8-22003.1 parking regulations for certain community commercial areas, the City recognizes the standard parking requirements are not always appropriate for areas historically developed in a "mainstreet" pattern and can act as a constraint to revitalization if applied strictly. This section of the code is intended to provide alternatives to certain parking standards for specific areas within the Community Commercial zoned districts of Centerville.

The Planning Commission may approve reduction or elimination of parking spaces otherwise required for major expansion or change of use of existing building uses or construction of new buildings. The theater operation ceased for some time, and therefore, lost its legal non-conforming status. A recent Zoning Text Amendment requires a movie theater or live theater in the C-C district obtain a Conditional Use Permit. Until this Zoning Text Amendment came into effect, both uses were permitted in the C-C district.

As part of the approval of a waiver of parking space requirements, the Planning Commission must make findings. The necessary findings are summarized below in *Italics*, with staff comments following each:

1. *Parking has been provided on-site and off-site within four hundred feet of the subject property to maximum extent feasible.* Together with the 18 spaces on site, and 57 off-site parking spaces, parking will be sufficient to meet the needs of the proposed use, as a performing arts theater and motion picture theater.
2. *There is sufficient on-street parking to accommodate the vehicles used by employees and customers of the business seeking the reduced parking requirement approval.* The on-street parking along Joseph Street, Peralta Boulevard and Maple Street exceeds the number of spaces requested to be waived by 34 spaces. Staff has reviewed a recent study prepared by Fehr & Peers in February 2002, on occupancy rates at these on-street

parking locations and conclude that of the 59 spaces provided in the four locations described, 25 spaces will be readily available for theater users during its hours of operation. With the off site parking, curb parking and on-site parking, employees and customers will be adequately provided for.

3. The reduced parking requirement will not be detrimental to property within three hundred feet of the business seeking the reduction. Because there is a sufficiency of on-site and on-street curb parking and off-site parking, the parking reduction will not have a detrimental effect on the properties within 300 feet. The applicant is proposing to have a parking attendant directing traffic, and providing maps to users from the main lot to help ease the traffic flow.
  4. The reduction or elimination of parking required for the use change or building expansion or new construction implements, to the extent applicable or desirable, specific side and front yard objectives of the design guidelines adopted for the area. The reduction of parking required does not cause a change in the side and front yard setbacks and therefore implements the specific side and front yard objectives of the design guidelines.
  5. In no instance can the zoning administrator approve parking reductions where the additional parking otherwise required by this chapter would exceed twenty-five percent of the space already provided. The proposed reduction is 25% of what is provided by the plan. Reductions in cases where additional parking otherwise required would exceed twenty five percent of the spaces already provided would require Planning Commission approval.
- **Circulation/Access Analysis:** Vehicular access to the site can be made from either Fremont Boulevard or Maple Street onto Beloveria Court. Pedestrians can access the front doors of the theater from Fremont Boulevard. All paving and circulation areas are in fairly good condition and are acceptable for this Conditional Use Permit.

#### **Applicable Fees:**

- **Centerville Specific Plan Fee:** This project is located within Subarea 1 of the Centerville Specific Plan. The project does not involve any new development or redevelopment of the site and therefore, Centerville Specific Plan fees are not applicable for this project.

**Redevelopment:** This project is within the Centerville Redevelopment Area. This project will help implement a number of goals and objectives (Part IV) of the Centerville Redevelopment Plan. More specifically, an active cultural and performing arts facility is an appropriate new business for the Center Theater building and for Centerville's historic area (Goal B.21). The structure was built with this use in mind and using the building for performances, films and meeting facilities will help to "preserve and capitalize upon the historic, social and cultural resources and heritage of Centerville to the maximum extent possible" (Part IV.A. [Overview] and Goal A.3). In addition, the use meets the Redevelopment Plan's goal of "preserving and creating civic, cultural and educational facilities and amenities as a catalyst for area revitalization" (Goal B.22). It's location in the heart of Centerville's historic district is expected to assist with revitalizing Centerville's historic business district (Goals A.1 and B.8) and help eliminate adverse physical and economic conditions within the Project Area (Goal B.1) by bringing additional consumers to the area. The experience of neighboring communities, like Walnut Creek and Mountain View, has shown that performing arts centers help improve restaurant demand in the community, and can even encourage shopping trips as customers become familiar with store merchandise in their walks to and from the restaurants and theater. This increase in consumer foot-traffic (Goal B.10) is expected to attract additional new business to the area and help increase the concentration of retail activities there (Goals B.9 and B.20). It is also expected to help retain and support the expansion of existing businesses within the area (Goal B.21) while preserving a key historic structure that is an important link to Centerville's heritage (Goal B.19).

**Environmental Analysis:** This project is categorically exempt from CEQA review under Section 15332, In-Fill Development Projects.

**Response from Agencies and Organizations:** At the time of the publication of this report, Planning staff has received the 24 letters of support from the public. Letters are enclosed in the packet.

**Enclosures:**    Exhibit "A"        Site Plan & Floor Plan  
                     Exhibit "B"        Findings and Conditions of Approval  
                     Informational       Letters from the public  
                     Informational       Proposal information

**Exhibits:**        Exhibit "A"        Site Plan & Floor Plan  
                     Exhibit "B"        Conditions of Approval

**Recommended Actions:**

1.        Hold public hearing.
2.        Find this project exempt from CEQA review under Section 15332, In-Fill Development Projects.
3.        Find PLN2003-00085 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Local Economy Chapters as enumerated within the staff report.
4.        Approve PLN2003-00085, as shown on Exhibit "A", subject to findings and conditions on Exhibit "B".

**Exhibit "B"**  
**Findings and Conditions of Approval for PLN2003-00085**  
**37411 Fremont Boulevard & 4036 Beloveria Court**

Center Theater– Conditional Use Permit

**FINDINGS:**

1. The use is consistent with the General Plan designation for the site; since the land use, a movie theatre and performing arts theater is conditionally permitted on property designated Community Commercial on the General Plan.
2. The site is suitable and adequate for the proposed use because the theatre operation conforms to ordinance requirements for the zoning district and is subject to conditions of approval that will ensure the use does not have an adverse impact on the site or surroundings.
3. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because all roadway improvements adjacent to the project site have been completed or will be completed with this project. Sufficient parking is provided, points of ingress-egress are properly located, and adequate fire fighting equipment access and facilities are available.
4. The estimated economic effect of the proposed use on nearby uses is not adverse because the proposed building exists and was previously used as a theatre with no apparent adverse effect to date, and none foreseen.
5. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large because the theatre use is properly regulated with adequate parking, and would not create nuisances or degrade the environment and is designed to limit impacts on surrounding residents.
6. The design of the project is compatible with existing and proposed development in the district and its surroundings because the proposed project is designed to be compatible with nearby commercial, institutional and residential uses.
7. All public improvements or facilities required as a part of this approval are directly attributable to the proposed development, and are required for reasons related to public health, safety and welfare.
8. The proposed project described in the application will not endanger public sewers, storm drains, watercourses, streets, street improvements, or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way. The adequacy of the existing sewer, water and drainage facilities proposed for the project has been reviewed by the different utility agencies. The proposed development will not alter or obstruct the natural flow from abutting properties or divert drainage from its natural watershed.

## CONDITIONS:

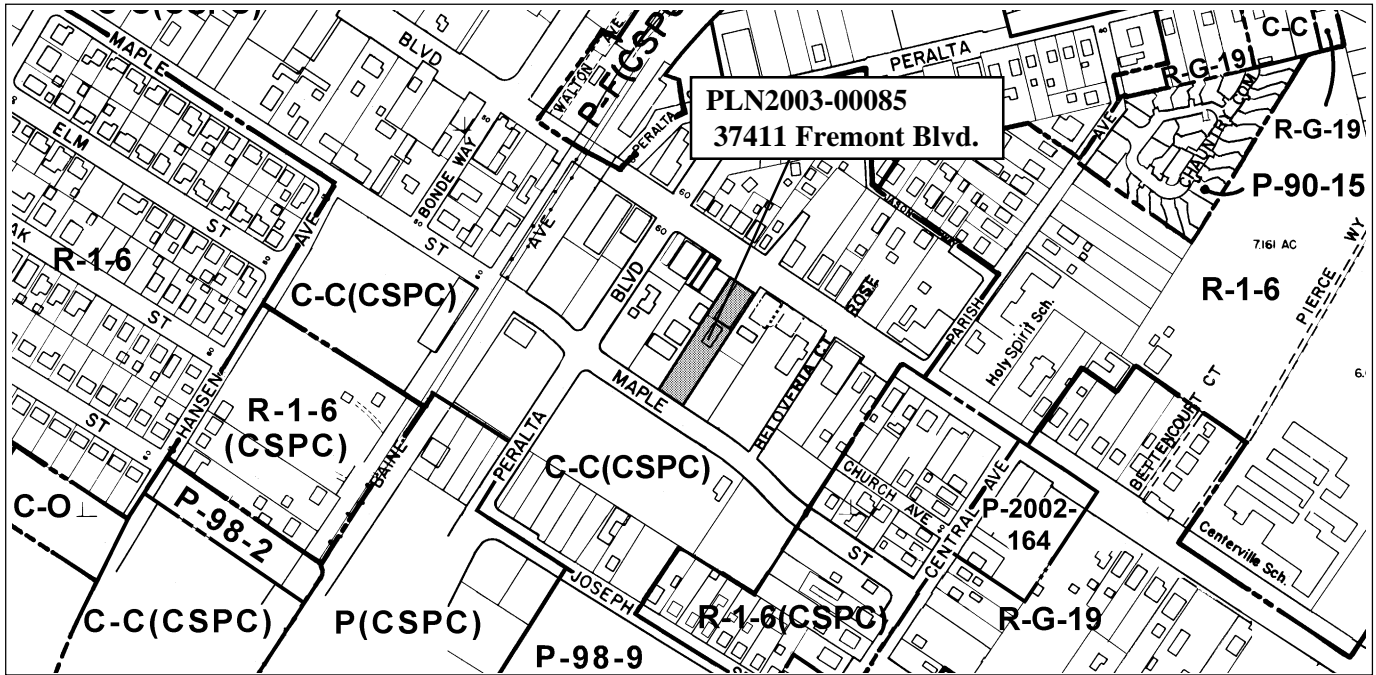
1. Approval of PLN2003-00085 shall conform to Exhibit "A" (Site Plan) and all conditions of approval set forth herein.
2. Minor modifications to the Conditions of Approval within this Conditional Use Permit may be allowed, subject to the approval of the Assistant City Manager, if such modifications are in keeping with the intent of the original approval.
3. If the Assistant City Manager finds evidence that conditions of approval have not been fulfilled or that the use or uses has or have resulted in a substantial adverse effect on the health, and/or general welfare of users of adjacent or proximate property, or have a substantial adverse impact on public facilities or services, the Assistant City Manager may refer the use permit to the Planning Commission for review. If, upon such review, the Commission finds that any of the results above have occurred, the Commission may modify or revoke the use permit.
4. This Conditional Use Permit allows the operation of a movie theatre and performance arts theater. This CUP permits no other use. Any expansion of use or alternative uses shall require an amendment to this CUP, and shall be reviewed by the Planning Commission. Adult motion picture theater is not permitted.
5. The applicant shall provide off-site parking agreements executed by property owners within 400 feet of the site. The parking supply must be available for the theater use and not interfere with the hours of operation of the businesses on the provider's property. The applicant shall provide a total of 57 parking spaces. Access and peak usage times will be reviewed by staff for conformance.
6. The off-site parking agreements shall be subject to the review and approval as to form and content by the City Attorney. Each agreement shall specifically identify its term, whether finite or indeterminate. When staff receives fully executed parking agreements from property owners sufficient to satisfy the requirement for 57 off-site spaces, staff will review the term of each agreement to determine the agreement with the earliest termination date. That earliest termination date shall be the automatic expiration date of the Conditional Use Permit, without further public notice or hearing.
7. This Use Permit shall be subject to the review of the Planning Commission for modification or revocation pursuant to Condition No. 3 when any required parking agreement expires or when for any other reason the applicant cannot meet the off-site parking requirement of 57 spaces, or the total parking requirement of 75 spaces (57 off-site & 18 on-site).
8. If, for any reason, there is a deficiency in the number of parking spaces available for this CUP (as required by Condition No. 7), the applicant shall (no later than 30 calendar days after the occurrence of the deficiency) provide replacement parking spaces within 400 feet of the project site. Examples of reasons for a parking deficiency include: a property owner decides to cancel the parking agreement with the applicant, or the applicant cannot maintain a parking agreement because of a change of ownership.
9. The maximum capacity of the theater shall not exceed 400 seats. The applicant shall restrict the use of the remaining 171 seats so that they are not easily accessible to the patrons. The method of restriction is subject to review and approval of the Assistant City Manager.
10. Prior to operating the dinner theater portion of this CUP, the applicant will be required to obtain necessary approvals by the necessary local and State agencies.
11. Regular hours of operation for the theatre shall be as follows:  
  
5:00 p.m. to 11:00 p.m. Monday through Friday  
12:00 p.m. to 11:00 p.m. Saturday & Sunday



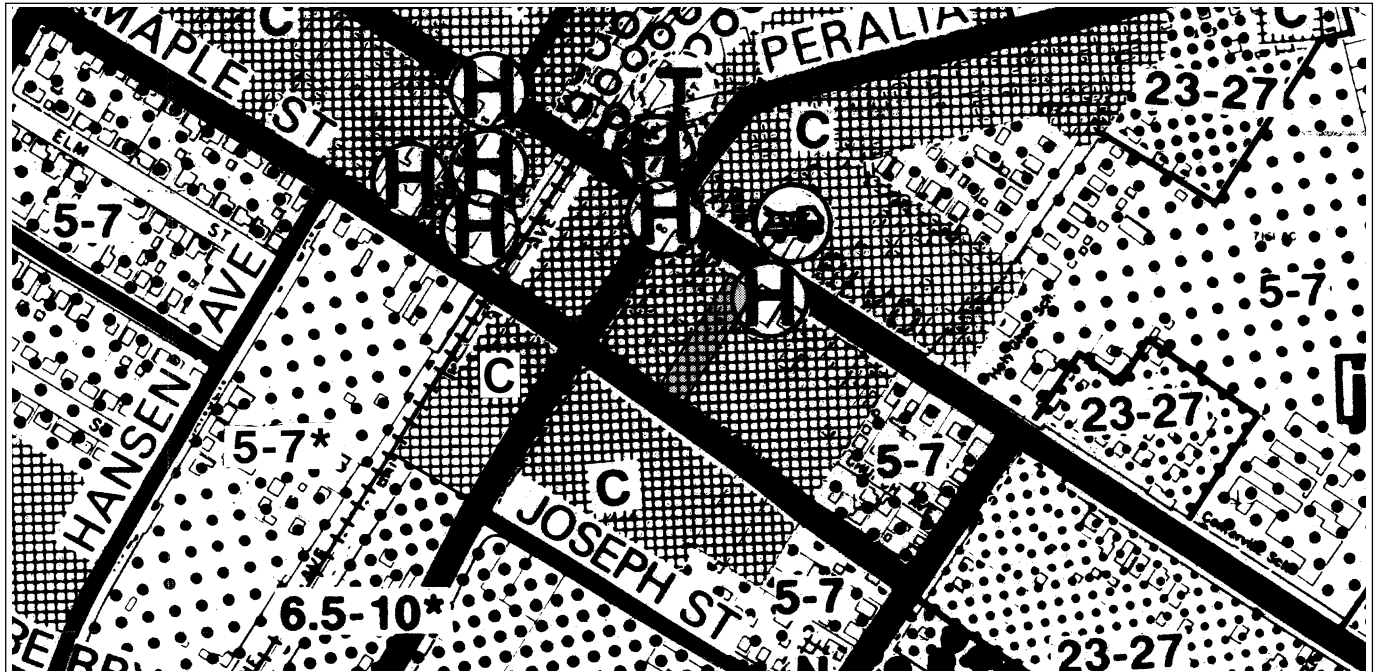
All functions will conclude by 11 pm. The theater will be locked up by 12 am. Any proposal to change hours of operation shall require the written approval of the Assistant City Manager.

12. Maps to parking areas will be distributed to patrons and will be made available at all times.

# INFORMATIONAL



Existing Zoning



Existing General Plan

**Project Number:** PLN2003-00085(CUP)  
**Project Name:** Center Theater  
**Project Description:** To consider a Conditional Use Permit for a performing arts theater and movie theater, and a waiver for reduction of parking space requirements.

**Note:** Prior arrangements for access are not required for this site.

